The general rule is that a contractor, manufacturer or vendor is not liable to third parties who have no contractual relations with him, for negligence in the construction, manufacture or sale of the articles he handles. *Huset* v. *J. V. Case Threshing Machine Co.*, 120 Fed. 865; *Winterbottom* v. *Wright*, 10 M. & W. 109; *McCaffrey* v. *Mossberg & Granville Mfg. Co.*, 23 R. I. 358, 55 L. R. A. 822; *Cadillac Motor Car Co.* v. *Johnson*, 221 Fed. 801; Contra—*E. J. Shubert* v. *J. R. Clark Co.*, 49 Minn. 331, 15 L. R. A. 818. But there are three exceptions to this general rule, namely: (1), where the thing causing the injury is of a noxious or dangerous kind; such cases where one who deals with an eminently dangerous article owes a public duty to all to whom it may come and whose lives may be endangered thereby, to exercise caution adequate to the peril involved. *Thomas* v. *Winchester*, 6 N. Y. 397; *Wellington* v. *Downer Kerosine Oil Co.*, 104 Mass. 64; *Morton* v. *Sewall*, 106 Mass 143. (2), where the defendant has been guilty of fraud or deceit in passing off the thing. *Levy* v. *Langridge*, 4 M. & W. 337; *Huset* v. *J. V. Case Co.*, supra; *Lewis* v. *Terry*, 111 Cal. 39, 31 L. R. A. 220. (3), an owner's act of negligence which causes injury to one who is invited by him to use his defective appliance upon the owner's premises may form a basis of an action against the owner. *Caughtry* v. *Globe Woolen Co.*, 56 N. Y. 124; *Roddy* v. *Railroad Co.*, 104 Mo. 234; also see 8 MICH. L. REV. 164; and 11 MICH. L. REV. 490. There are two recent decisions in New York which are opposite in view but the latter of which does not overrule the former. In *MacPherson* v. *Buick Motor Car Co.*, 145 N. Y. Supp. 462, 160 App. Div. 55, the court allowed the recovery by the plaintiff for injuries sustained by reason of a defect in the wheels of a car sold to him by the defendant, although the wheels were not manufactured by the defendant. The case of *Cadillac Motor Car Co.* v. *Johnson*, supra, decided two years later, holds just the opposite on the same statement of facts. The court said the case comes under the general rule and totally disregards the decision in *MacPherson* v. *Buick Motor Co.*, supra, in reaching its decision. Judge Coxe dissented on the ground that if the defendant was not liable to the plaintiff it was obvious that the plaintiff was without relief for the injuries sustained.

PARTITION—EFFECT OF JUDGMENT IN PARTITION SUIT.—A large tract of land was partitioned in 1815, plaintiff's assignors receiving lots 1 and 4 and defendant's assignor receiving lot 12. Plaintiff seeks to recover lots 1 and 4 from defendant, and relies upon the theory that his title can not be denied by defendant because of the implied warranty arising from the partition and the estoppel arising from the partition judgment. *Held*, that the implied warranty did not prevail between grantees of the tenants and that the judgment did not create an estoppel as title was not in issue. *Weston* v. *John L. Roper Lumber Co.* (N. C. 1915), 86 S. E. 363.

The doctrine of implied warranty in case of partition arose from the remedy allowed a coparcener at common law as a method of securing recompense for a loss arising after a compulsory partition. If one of the coparceners aliened in fee, the right to vouch on the warranty was lost though the other coparceners could enforce it against the alienee. By statute, 31

Hen. VIII, c. 1 and 32 Hen. VIII, c. 32, the right of compulsory partition together with the right of voucher on the implied warranty was conferred on tenants in common and on joint tenants. *Bustard's Case,* 4 Co. Rep. 121a; *Morrice's Case,* 6 Co. Rep. 12b; COKE, LITTLETON, Bk. 3, Ch. 1, §§ 262-3; 2 BLACKSTONE, COM. 185, 189, 194; 4 KENT, COM. (18th ed.) p. *364, *65; *Sawyers* v. *Cator,* supra. Whether a judgment in a partition suit should work an *Walker* v. *Hall,* 15 Ohio St. 355. The principal case seems to recognize that an implied warranty exists between the tenants and their privies. As voucher on the warranty is now obsolete there is doubt as to the method of enforcing such an implied warranty. *Walker* v. *Hall,* supra; *Weiser* v. *Weiser,* supra. A bill in equity has been suggested as an appropriate remedy. *Sawyers* v. *Cator,* supra. Whether a judgment in a partition suit should work an estoppel to deny title would seem to depend on whether title was in issue. BIGELOW, ESTOP. (6th ed.) 87. At common law partition was only a possessory action and so remains where its character has not been changed by statute. *Kennedy* v. *Rainey,* 145 Ala. 572; *Pierce* v. *Oliver,* 13 Mass. 211; *Nash* v. *Cutler,* 16 Pick. (Mass.) 491; *Finley* v. *Cathcart,* 149 Ind. 470. When under modern statutes the title is put in issue the judgment thereon should operate by way of estoppel. FREEMAN, COTEN. & PART., § 531; *Turpin* v. *Dennis,* 139 Ill. 274; *Wright* v. *Dunning,* 46 Ill. 271; *Dutch's Appeal,* 57 Pa. St. 461.

RAILROADS—LIABILITY TO TRESPASSERS AND LICENSEES.—X was killed by defendant's locomotive while on a bridge on which defendant had posted a notice as follows: "Warning: No Thoroughfare. No persons allowed on this bridge except employees." The evidence showed the train was backing down the track without any headlight on its tender and neither blowing any whistle nor ringing a bell as a warning at the time of the accident. It further appeared that the bridge had for years been used by the public as a thoroughfare and that the railroad company knew of the use. In an action by X's administratrix, a directed verdict for defendant was given on the ground that "Defendant having put up signs warning people to keep off the track, had done its full duty to the public." *Held* that, as the deceased was a willful trespasser, the company owed him no duty and no recovery should be allowed. *Newell* v. *Detroit, G. H. & M. R. Co.* (Mich. 1915), 153 N. W. 1077.

Practically all authorities unite in holding that the only duty owing to a willful trespasser is not to injure him willfully or wantonly or by negligence so gross as to amount to wantonness. *Georgia R. Co.* v. *Fuller,* 6 Ga. App. 454, 65 S. E. 313; *Bartlett* v. *Wabash R. Co.,* 220 Ill. 163, 77 N. E. 96 (affirming 116 Ill. App. 67); *Wright* v. *Boston R. Co.,* 142 Mass. 296, 7 N. E. 866; *Grand Trunk R. Co.* v. *Flagg,* 156 Fed. 359; *Jeffersonville R. Co.* v. *Gold-Smith,* 47 Ind. 43, 8 Am. Ry. Rep. 315; *Trudell* v. *Grand Trunk R. Co.,* 126 Mich. 73; *Verner* v. *Alabama Ry. Co.,* 103 Ala. 574. However there is a line of cases holding that plaintiff can recover for injury sustained through the negligence of the defendant, *even though he is a trespasser,* if the defendant knew of the public use of such right of way, and had never objected. *Texas*